

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.477 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For Orders on Re-Objection (Flag "A")
2. For hearing of CMA No. 6244/24 (U/O 39 Rule 1 & 2 CPC)

27.06.2024.

Mr. Shaukat Hayat, Advocate for Plaintiff.
Mr. Ghulam Asghar Pathan, Syed Ahsan Ali Shah, Mukesh Kumar Khatri,
Advocates for Defendants along with Mansoor Wisal, DCIR.
Mr. Kashif Nazeer, Assistant Attorney General.

On the last date of hearing the following order was
passed.

"This is a Civil Suit under Section 9 CPC filed against the Tax Department. The Hon'ble Supreme Court in a case reported as **Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444)** has been pleased to observe that though a Civil Suit on the original side of this Court is maintainable, however, with certain conditions. It has been observed in the concluding Para(s) 17 & 18 as under:-

"17. Keeping in view the alarming allegations made above, it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised by the Single Bench and the suits must be expeditiously decided within the period of one year or less so that these suits are not used by aggrieved parties as a means to deprive the Public Exchequer of the taxes due for years on the basis of interim injunctions. Furthermore, as a guiding principle, to bring some certainty and uniformity in the treatment of such suits, the suits filed and those that have already been filed must only be entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities as a goodwill gesture, so that on conclusion of the suit, according to the correct determination of the tax due or exempt (as the case may be), the same may be refunded or the remaining balance be paid.

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

(1) the adverse orders/actions by the Assessment Officer/Customs authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed under Section

217(2) of the Customs Act;

(2) the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court.

(3) Section 217(2) ibid only bars the cognizance of suit(s) filed under the civil jurisdiction exercised by the civil courts, and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi;

(4) allowing such special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution;

(5) the suits of the appellants filed before the Single Bench of the Sindh High Court at Karachi are maintainable;

(6) despite the fact that the Single Bench of the Sindh High Court at Karachi can take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised and the suits must be expeditiously decided within the period of one year or less; and

(7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities."

In view of such position, the Plaintiffs are directed to deposit 50% of the amount being claimed by the Department within three days from today and after deposit of the same with the Tax Authorities, the receipt to that effect be placed on record through statement. If the deposit is not made, the Suits stand dismissed as not maintainable. Office is also directed to explain as to why at the time of institution of these Suits, no objection was raised in view of the judgment of Honourable Supreme Court in the cases of **Searle** (supra).

To come up on **27.06.2024** at **09:30** A.M. for compliance. Office to place copy of this order in the connected Suits as above."

Today, it is informed that no compliance has been made; however, learned Counsel for the Plaintiff has contended that since no amount has been calculated by the tax authorities; therefore, Paragraph-18(7) of the judgment passed in the case of **Searle IV Solution** (supra) will not apply.

Heard Counsel for the Plaintiff and perused the record. Admittedly no compliance has been made as to Order passed on 20.06.2024 for deposit of 50% of the disputed amount; whereas, through this Suit, the Plaintiff has impugned a Show Cause Notice dated 15.1.2024 issued under Section 11(2) & (3) of the Sales Tax Act, 1990, whereby, it has been alleged that the Plaintiff is liable to pay an amount of Rs.59,712,503/- and as to why the same may not be assessed against the Plaintiff. The contention of the Plaintiff's Counsel that the amount is only payable when it is finally calculated and determined is misconceived as otherwise it would negate the intent / dicta laid down by the Honourable Supreme Court in the case of **Searle IV Solution** (supra). Moreover, in Para 17 of the

judgments as above, it has been observed that “it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, *such jurisdiction must be sparingly exercised by the Single Bench.*” therefore, in view of such position this Court is not required to mandatorily exercise such jurisdiction in tax matters on the Original Side of this Court in terms of Section 9 CPC read with Section 7 of the Civil Courts Ordinance, 1962.

Besides this, even otherwise, if at all a Suit is maintainable, even then a direct challenge to a Show Cause Notice without availing the remedy before the Adjudicating and the Appellate Authority has also been deprecated by the Courts, as this Court is not required to decide the controversy in hand, which apparently relates to the alleged denial of input tax claimed by the plaintiff, if any, whereas admittedly it is not a case of any jurisdictional defect or the competency of the concerned officer. If at all, even if a legal question is raised, it is not mandatory upon the Court to entertain a Civil Suit in all run of the mill cases; rather, the discretion vested in the Court has to be exercised with restraint and not as a matter of routine. Therefore, I am of the view that a mere show cause notice by itself is not a ground to invoke Original Civil jurisdiction of this Court, and the Plaintiff ought to have approached the respondents for raising all such legal issues. Per recent announcement in *Jehangir Khan Tareen*¹ this tendency has been deprecated by the Hon’ble Supreme Court by holding that Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities must be the normal rule². The facts of the present case are one, which fully attract the ratio of the said judgment.

Accordingly, in view of the above, the Suit being not maintainable is hereby dismissed along with pending application(s).

J U D G E

¹ 2022 S C M R 92 COMMISSIONER INLAND REVENUE V JAHANGIR KHAN TAREEN

² Indus Motor Company Limited v Pakistan Order dated 13.2.2023 in C. P. NO. D-5003 /2019

Avaz P.S.